

DOCKET NO.: LLI-CV19-6021698-S : SUPERIOR COURT  
THE W.L. GILBERT TRUST CORPORATION : JUDICIAL DISTRICT OF LITCHFIELD  
VS. : AT TORRINGTON  
TOWN OF WINCHESTER : AUGUST 19, 2019

**PLAINTIFF'S REQUEST TO REVISE DEFENDANT'S SPECIAL DEFENSES AND  
COUNTERCLAIM**

Pursuant to Practice Book § 10-35 and 10-36, the Plaintiff/Counterclaim Defendant (hereinafter "the Gilbert Trust") hereby requests that the Defendant/Counterclaim Plaintiff (hereinafter "the Town") revise its Special Defenses and Counterclaim for the reasons set forth below.

**Requested Revision #1:**

- A. *Portion of Pleading to be Revised:* First Special Defense.
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise its First Special Defense to (1) delete this special defense, or in the alternative, (2) to plead the factual allegations upon which the Town relies to allege that waiver applies to the Gilbert Trust's claims.
- C. *Reason for Request:* (1) The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. Waiver is not a special defense. Practice Book § 10-50 states in relevant part: "No facts may be proved under either a general or special denial except such as show that the plaintiff's statements of fact are untrue. Facts which are consistent with such statements but show, notwithstanding, that the plaintiff has no cause of action, must be specially alleged. Thus, accord and satisfaction, arbitration and award, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res judicata must be specially pleaded ..." Waiver is not one of the enumerated special defenses defined in the Practice Book. (2) Alternatively, to obtain a more complete or particular statement of the allegations. Practice Book § 10-1 states: "Each pleading shall contain a plain and concise statement of material facts on which the pleader relies, but not the evidence by which they are to be proved..." As presently drafted, Gilbert Trust cannot respond to this special defense because it is devoid of any factual allegations that support the legal conclusion that the Gilbert Trust is barred from

pursuing title due to the reverter clause due to a "waiver." Therefore, a more particular statement of facts is necessary to enable an appropriate reply to this special defense.

D. *Response:*

Requested Revision #2:

A. *Portion of Pleading to be Revised:* Second Special Defense.

B. *Requested Revision:* The Gilbert Trust requests that the Town revise its Second Special Defense to (1) delete this special defense, or in the alternative, (2) to plead the factual allegations upon which the Town relies to allege that the doctrine of unclean hands applies to the Gilbert Trust's claims.

C. *Reason for Request:* (1) The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. Unclean hands is not a special defense. Practice Book § 10-50 states in relevant part: "No facts may be proved under either a general or special denial except such as show that the plaintiff's statements of fact are untrue. Facts which are consistent with such statements but show, notwithstanding, that the plaintiff has no cause of action, must be specially alleged. Thus, accord and satisfaction, arbitration and award, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res judicata must be specially pleaded ..." Unclean hands is not one of the enumerated special defenses defined in the Practice Book. (2) Alternatively, to obtain a more complete or particular statement of the allegations. Practice Book § 10-1 states: "Each pleading shall contain a plain and concise statement of material facts on which the pleader relies, but not the evidence by which they are to be proved..." As presently drafted, Gilbert Trust cannot respond to this special defense because it is devoid of any factual allegations that support the legal conclusion that the Gilbert Trust is barred from pursuing title pursuant to the reverter clause due to the doctrine of unclean hands. Therefore, a more particular statement of facts is necessary to enable an appropriate reply to this special defense.

D. *Response:*

Requested Revision #3:

- A. *Portion of Pleading to be Revised:* Third Special Defense.
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise its Third Special Defense to (1) delete this special defense, or in the alternative, (2) to plead the factual allegations that comprise the alleged “change in circumstances” that have occurred that render the reverter clause void.
- C. *Reason for Request:* (1) The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. A change in circumstances is not a special defense. Practice Book § 10-50 states in relevant part: “No facts may be proved under either a general or special denial except such as show that the plaintiff’s statements of fact are untrue. Facts which are consistent with such statements but show, notwithstanding, that the plaintiff has no cause of action, must be specially alleged. Thus, accord and satisfaction, arbitration and award, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res judicata must be specially pleaded ...” A “change in circumstances” rendering a provision void is not one of the enumerated special defenses defined in the Practice Book. (2) Alternatively, to obtain a more complete or particular statement of the allegations. Practice Book § 10-1 states: “Each pleading shall contain a plain and concise statement of material facts on which the pleader relies, but not the evidence by which they are to be proved...” As presently drafted, Gilbert Trust cannot respond to this special defense because it is devoid of any factual allegations that support the legal conclusion that the Gilbert Trust is barred from pursuing title due to the reverter clause due to some unnamed and undefined “change in circumstances” that somehow rendered a deeded provision void. Therefore, a more particular statement of facts is necessary to enable an appropriate reply to this special defense and the Gilbert Trust requests that the Town plead with specificity the alleged “change in circumstances” and how that change nullified the reverter clause.
- D. *Response:*

Requested Revision #4:

- A. *Portion of Pleading to be Revised:* Fourth Special Defense.
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise its Fourth Special Defense to delete this special defense in its entirety.
- C. *Reason for Request:* The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. Practice Book § 10-50 states in relevant part: "No facts may be proved under either a general or special denial except such as show that the plaintiff's statements of fact are untrue. Facts which are consistent with such statements but show, notwithstanding, that the plaintiff has no cause of action, must be specially alleged. Thus, accord and satisfaction, arbitration and award, duress, fraud, illegality not apparent on the face of the pleadings, infancy, that the defendant was non compos mentis, payment (even though nonpayment is alleged by the plaintiff), release, the statute of limitations and res judicata must be specially pleaded ..." A predecessor in title abandoning rights contained in a reverter clause is not a special defense under the Practice Book.
- D. *Response:*

Requested Revision #5:

- A. *Portion of Pleading to be Revised:* The "Factual Background" of the Town's Counterclaim
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise its counterclaim to delete the title "Factual Background" and simply start with "Count One" as required by the Connecticut Practice Book.
- C. *Reason for Request:* The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. Practice Book § 10-26 states: "Where separate and distinct causes of action, as distinguished from separate and distinct claims for relief founded on the same cause of action or transaction, are joined, the statement of the second shall be prefaced by the words Second Count, and so on for others; and the several paragraphs of each count shall be numbered separately beginning in each count with number one. As presently drafted, the Town gives a 21 paragraph "factual background" rather beginning their pleading with Count One. Count One then begins with Paragraph #22. This is improper. This is not federal court. In Connecticut, Complaints and Counterclaims begin with Count One, and proceed with numerical counts forward.

D. *Response:*

Requested Revision #6:

- A. *Portion of Pleading to be Revised:* Paragraph 4 of all counts of the Counterclaim
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise its counterclaim to delete Paragraph 4.
- C. *Reason for Request:* The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. As with many paragraphs contained in the Town's "Factual Background," the allegations of paragraph 4, namely the circumstances surrounding and under which the State of Connecticut took control of the Town's school system, are completely and utterly irrelevant to the allegations of the Town's counterclaim. The Town being unable to administer its school system properly has nothing to do with whether the Gilbert Trust interfered with the business expectancies of the Town and the Gilbert School, nor does it have any bearing on its claim for abuse of process or slander of title. It is immaterial, unnecessary, improper and irrelevant and should be deleted. This paragraph, as well as many others in the "Factual Background" seek nothing more than to "muddy the waters" of this lawsuit.

D. *Response:*

Requested Revision #7:

- A. *Portion of Pleading to be Revised:* Paragraph 5 of all counts of the Counterclaim
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise its counterclaim to delete Paragraph 5.
- C. *Reason for Request:* The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. As with many paragraphs contained in the Town's "Factual Background," the allegations of paragraph 5, namely the circumstances

surrounding and under with the State of Connecticut took control of the Town's school system, are completely and utterly irrelevant to the allegations of the Town's counterclaim. The Town being unable to administer its school system properly has nothing to do with whether the Gilbert Trust interfered with the business expectancies of the Town and the Gilbert School, nor does it have any bearing on its claim for abuse of process or slander of title. It is immaterial, unnecessary, improper and irrelevant and should be deleted. This paragraph, as well as many others in the "Factual Background" seek nothing more than to "muddy the waters" of this lawsuit.

D. *Response:*

Requested Revision #8:

- A. *Portion of Pleading to be Revised:* Paragraph 6 of all counts of the Counterclaim
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise its counterclaim to delete Paragraph 6.
- C. *Reason for Request:* The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. As with many paragraphs contained in the Town's "Factual Background," the allegations of paragraph 6, namely the circumstances surrounding and under with the State of Connecticut took control of the Town's school system, are completely and utterly irrelevant to the allegations of the Town's counterclaim. The Town being unable to administer its school system properly has nothing to do with whether the Gilbert Trust interfered with the business expectancies of the Town and the Gilbert School, nor does it have any bearing on its claim for abuse of process or slander of title. It is immaterial, unnecessary, improper and irrelevant and should be deleted. This paragraph, as well as many others in the "Factual Background" seek nothing more than to "muddy the waters" of this lawsuit.

D. *Response:*

Requested Revision #9:

- A. *Portion of Pleading to be Revised:* Paragraph 7 of all counts of the Counterclaim
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise its counterclaim to delete Paragraph 7.
- C. *Reason for Request:* The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. As with many paragraphs contained in the Town's "Factual Background," the allegations of paragraph 7, namely the circumstances surrounding and under with the State of Connecticut took control of the Town's school system, are completely and utterly irrelevant to the allegations of the Town's counterclaim. The Town being unable to administer its school system properly has nothing to do with whether the Gilbert Trust interfered with the business expectancies of the Town and the Gilbert School, nor does it have any bearing on its claim for abuse of process or slander of title. It is immaterial, unnecessary, improper and irrelevant and should be deleted. This paragraph, as well as many others in the "Factual Background" seek nothing more than to "muddy the waters" of this lawsuit.
- D. *Response:*

Requested Revision #10:

- A. *Portion of Pleading to be Revised:* Paragraph 8 (and all 9 subparagraphs thereof) of all counts of the Counterclaim
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise its counterclaim to delete Paragraph 8 (and all 9 subparagraphs thereof).
- C. *Reason for Request:* The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. As with many paragraphs contained in the Town's "Factual Background," the allegations of paragraph 8 (and all 9 subparagraphs thereof), namely the circumstances surrounding and under with the State of Connecticut took control of the Town's school system, are completely and utterly irrelevant to the allegations of the Town's counterclaim. The Town being unable to administer its school system properly has nothing to do with whether the Gilbert Trust interfered with the business expectancies of the Town and the Gilbert School, nor does it have any bearing on

its claim for abuse of process or slander of title. It is immaterial, unnecessary, improper and irrelevant and should be deleted. This paragraph, as well as many others in the "Factual Background" seek nothing more than to "muddy the waters" of this lawsuit.

D. *Response:*

Requested Revision #11:

- A. *Portion of Pleading to be Revised:* Paragraph 13 of all counts of the Counterclaim
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise paragraph 13 to delete the names of the members of the Board of Directors of the Gilbert School appointed by the Gilbert Trust.
- C. *Reason for Request:* The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. The inclusion of the specific names of the five members of the Gilbert School's board of directors that are appointed by the Gilbert Trust is irrelevant to the allegations contained in the Counterclaim. These individuals are not parties to this action and are private individuals. The inclusion of their names in the Counterclaim is an attempt by the Town to publicize their identities in this matter and is political in nature. It is also an attempt to slander these individuals by implying that the unproven allegations of the counterclaim are applicable to them personally and that they are somehow doing something untoward. While the Gilbert Trust is unsure what purpose this entire paragraph of the Counterclaim serves in putting forth its claims, it is up to the Town how it wishes to plead. However, there is no legitimate reason for the naming of these individuals other than to politicize and weaponize their membership on the Board of Directors. Therefore, their names should be deleted as improper, unnecessary, impertinent, immaterial and scandalous.

D. *Response:*



Requested Revision #12:

- A. *Portion of Pleading to be Revised:* Paragraph 14 of all counts of the Counterclaim
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise paragraph 14 to delete the first sentence, specifically: "The Trust has no use for the playgrounds and athletic fields at issue here."
- C. *Reason for Request:* The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. This is not a material factual allegation. It is a conclusion and is impertinent. The Town has no knowledge of what use the Gilbert Trust has for the property, nor could it possibly in good faith allege that it has "no use." . Furthermore, in the next paragraph (#15), the Town identifies a possible use of the property, which in direct contradiction of the conclusory statement that the Gilbert Trust has "no use" for the property. The Town cannot plead in successive paragraphs that the Gilbert Trust has no use for the property and also has use for the property. It is absurd.
- D. *Response:*

Requested Revision #13:

- A. *Portion of Pleading to be Revised:* Paragraph 15 of all counts of the Counterclaim
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise paragraph 15 to delete the paragraph in its entirety.
- C. *Reason for Request:* The deletion of unnecessary, repetitious, scandalous, impertinent, immaterial or otherwise improper allegations. This is not a material factual allegation. It is a conclusion and is impertinent. The Town has no knowledge of what use the Gilbert Trust has for the property, nor could it possibly in good faith allege that its "only possible use" would be to benefit the Gilbert School. Rank speculation is not appropriate when alleging facts in a complaint or counterclaim.
- D. *Response:*

Requested Revision #14:

- A. *Portion of Pleading to be Revised:* Paragraph 22 of all counts of the Counterclaim
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise paragraph 22 to state specifically what the Gilbert Trust allegedly “knows of the contractual relationship and business expectancies” between the Town and the Gilbert School.
- C. *Reason for Request:* To obtain a more complete or particular statement of the allegations. Practice Book § 10-1 states: “Each pleading shall contain a plain and concise statement of material facts on which the pleader relies, but not the evidence by which they are to be proved...” As presently drafted, Gilbert Trust cannot respond to this paragraph because it is devoid of any factual allegations that support the legal conclusion that the Gilbert Trust “knows of the contractual relationship and business expectancies” between the Town and the Gilbert School. Quite frankly, this statement is so vague and ambiguous, it makes little sense. The Gilbert Trust requests that the paragraph be revised to state with specificity exactly what the Town is alleging the Gilbert Trust knows about the relationship and expectancies that exist between the Town and the Gilbert School.
- D. *Response:*

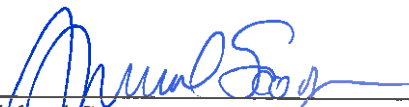
Requested Revision #15:

- A. *Portion of Pleading to be Revised:* Paragraph 24 of all counts of the Counterclaim
- B. *Requested Revision:* The Gilbert Trust requests that the Town revise paragraph 24 to define and state with specificity “the contractual and business relations and expectancies between the Town and the Gilbert School.”
- C. *Reason for Request:* To obtain a more complete or particular statement of the allegations. Practice Book § 10-1 states: “Each pleading shall contain a plain and concise statement of material facts on which the pleader relies, but not the evidence by which they are to be proved...” As presently drafted, Gilbert Trust cannot respond to this paragraph because it is too vague and ambiguous. The Town does not define what it means by “contractual and

business relations and expectancies” and therefore the Gilbert Trust cannot respond to the allegation that it is somehow interfering with those relations and expectancies. The Gilbert Trust requests that this paragraph be revised to identify and define these terms with specific facts so that the Gilbert Trust may appropriately answer and formulate a response.

D. *Response:*

PLAINTIFF/COUNTERCLAIM DEFENDANT,  
THE W.L. GILBERT TRUST CORPORATION

By:   
J. Michael Sconyers  
Ackerly Brown LLP  
Its Attorneys

**CERTIFICATION OF SERVICE**

I hereby certify that a copy of the foregoing has been mailed, by first class mail, postage prepaid to Kevin F. Nelligan, Esq., 194 Ashley Falls Road, P.O. Box 776, North Canaan, CT 06018 on this 19<sup>th</sup> day of August, 2019.

  
J. Michael Sconyers

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